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TERMINAL DISCLAIMER TO OBLIGATE A DOUBLE PATENTING
REJECTION OVER A PRIOR PATENT

Docket Number: HRT0279

In re Application of: Stephen W. Boyd et al.
 Application No.: 09/882,502
 Filed: October 18, 2001
 For: Devices and Methods for Port-Access Multivessel Coronary Artery Bypass

The owner*, Heartport, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 6,494,211. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. X The undersigned is an attorney or agent of record.

/Brian S. Tomka/
Signature _____ Date 8/4/05

Brian S. Tomka
Typed or printed name _____

X Terminal disclaimer fee under 37 CFR 1.20(d) included. Charge to Deposit Account No. 10-8750.
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*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
Form PTO/SB/60 may be used for making this certification. See MPEP § 824.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Box Patent Application, Washington, DC 20231.

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Serial No. 09/982,502

HRT 279

REMARKS

Claims 1-17, 19 and 21-25 are pending in this application. 18, 20 and 26-44 are canceled.

The Examiner rejected claims 1-17, 19 and 21-25 under the judicially created doctrine of obviousness type double patenting as being unpatentable over the claims 1-40 of US Patent No. 6494211 in view of Boyd (5799661). Without commenting on the basis of the rejection, Applicants submit terminal disclaimers for the above patents to overcome the rejection, and as such request the Examiner to withdraw the rejection.

In the event that it becomes necessary to charge additional extension fees or any additional charge, Applicants hereby permit the Commissioner to charge the Deposit Account No. 10-0750/HRT279/BST.

Respectfully submitted,

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Dated: August 4, 2005

PATENT APPLICATION FEE DETERMINATION RECORD

Effective October 1, 2001

Application or Docket Number

TR T-271
09/982,502

CLAIMS AS FILED - PART I

(Column 1) (Column 2)

SMALL ENTITY
TYPE OTHER THAN
OR SMALL ENTITY

RATE	FEES	RATE	FEES
BASIC FEE	370.00	OR BASIC FEE	740.00
X\$ 9=		OR X\$18=	1170
X42=		OR X84=	
+140=		OR +280=	
TOTAL		OR TOTAL	1910

TOTAL CLAIMS	8544	
FOR	NUMBER FILED	NUMBER EXTRA
TOTAL CHARGEABLE CLAIMS	8544 minus 20 =	8524
INDEPENDENT CLAIMS	85 minus 3 =	82
MULTIPLE DEPENDENT CLAIM PRESENT		<input type="checkbox"/>

* If the difference in column 1 is less than zero, enter "0" in column 2

CLAIMS AS AMENDED - PART II

(Column 1) (Column 2) (Column 3)

SMALL ENTITY OR OTHER THAN
SMALL ENTITY

RATE	ADDI- TIONAL FEE	RATE	ADDI- TIONAL FEE
X\$ 9=		OR X\$18=	
X42=		OR X84=	
+140=		OR +280=	
TOTAL ADDIT. FEE		OR TOTAL ADDIT. FEE	

AMENDMENT A	1/14/04	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
	Total	• 23	Minus	- 44	- 0
Independent	• 1	Minus	• 3	= 0	
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM					<input type="checkbox"/>

AMENDMENT B	8/4/05	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
	Total	• Minus	• Minus	=	
Independent	• Minus	• Minus	• Minus	=	
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM					<input type="checkbox"/>

RATE	ADDI- TIONAL FEE	RATE	ADDI- TIONAL FEE
X\$ 9=		OR X\$18=	
X42=		OR X84=	
+140=		OR +280=	
TOTAL ADDIT. FEE		OR TOTAL ADDIT. FEE	

AMENDMENT C	8/4/05	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
	Total	• Minus	• Minus	=	
Independent	• Minus	• Minus	• Minus	=	
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM					<input type="checkbox"/>

RATE	ADDI- TIONAL FEE	RATE	ADDI- TIONAL FEE
X\$ 9=		OR X\$18=	
X42=		OR X84=	
+140=		OR +280=	
TOTAL ADDIT. FEE		OR TOTAL ADDIT. FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.

** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20."

*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3."

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.